



Office of the Attorney General

Washington, D. C. 20530

June 3, 1998

TO: Holders of United States Attorneys' Manual
Title 9



PB98-172190

FROM: Janet Reno
Attorney General

United States Attorneys' Manual Staff
Executive Office for United States Attorneys

RE: Revised Policy Re Child Exploitation

AFFECTS: USAM 9-75.000

The attached revisions have been made to Chapter 75 in Title 9 of the United States Attorneys' Manual.



9-75.000 OBSCENITY, SEXUAL EXPLOITATION, SEXUAL ABUSE, AND RELATED OFFENSES

(6/3/98)

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9-75.001 Introduction--Child Abuse, Child Pornography and Obscenity Crimes

Obscenity crimes are prosecuted under 18 U.S.C. §§1460 through 1469. The substantive crimes are set forth in sections 1460-1466 and 1468. Section 1467 authorizes criminal forfeiture of the obscene items, the profits or proceeds obtained from the commission of the crimes, and the property used to commit or promote the commission of the obscenity crimes.

Prosecutions involving child pornography and the sexual exploitation of children are initiated under 18 U.S.C. §§ 2251 through 2260. The substantive statutes are sections 2251, 2251A, 2252, 2252A and 2260 and the relevant definitions are set forth in section 2256. Section 2253 authorizes criminal forfeiture, and section 2254 authorizes civil forfeiture, of the items depicting child pornography, the profits or proceeds obtained from the commission of the crimes, and the property

used to commit or promote the commission of the crimes. Section 2255 provides a civil remedy for victims and section 2259 provides mandatory restitution to victims. Section 2257 creates record keeping requirements for items depicting sexually explicit conduct and section 2258 creates a misdemeanor crime for failure to report child abuse.

Sexual abuse crimes are prosecuted under 18 U.S.C. §§ 2241 through 2248. The age of the victim and whether force was used are two important facts that help determine the appropriate statute and punishment. Section 2247 increases the maximum penalties for repeat offenders and section 2248 mandates restitution to the victims.

Crimes involving the transportation of individuals for illegal sexual activities are governed by 18 U.S.C. §§ 2421 through 2423. Section 2424 creates reporting requirements for individuals operating homes or other places for prostitution or related activities.

Section 1305 of Title 19 prohibits the importation of obscene items and authorizes the seizure and forfeiture of such items. Sections 3008 and 3010 of Title 39 impose requirements on how and to whom sexually oriented advertisements may be mailed. Individuals who violate these requirements may be prosecuted under 18 U.S.C. §§ 1735 and 1737. Section 223 of Title 47 prohibits, in certain situations, obscene or indecent telephone calls.

For an overview of the statutes that can be used to prosecute persons who commit obscenity, etc. violations, see the below-listed sections of the Criminal Resource Manual

Distribution of Obscene Matter -- Statutes	Criminal Resource Manual at 1963
Immoral Articles -- Prohibition of Importation	Criminal Resource Manual at 1964
Sexually Oriented Advertisements	Criminal Resource Manual at 1965
Sexual Exploitation of Children	Criminal Resource Manual at 1966
Selling or Buying of Children (Section 2251A)	Criminal Resource Manual at 1967
Certain Activities Relating to Material Involving the Sexual Exploitation of Minors -- 18 U.S.C §§ 2252 and 2252A	Criminal Resource Manual at 1968
Certain activities relating to material involving the sexual exploitation of minors	Criminal Resource Manual at 1969 and 2467
Criminal Forfeiture	Criminal Resource Manual at 1970
Civil Forfeiture	Criminal Resource Manual at 1971
Civil Remedy for Personal Injuries	Criminal Resource Manual at 1972
Definitions for 18 U.S.C. §§ 2251, 2251A, 2252A and 2252	Criminal Resource Manual at 1973
Record keeping requirements	Criminal Resource Manual at 1974
Failure to report child abuse	Criminal Resource Manual at 1975
Production of Sexually Explicit Depictions of a Minor for Importation into the United States	Criminal Resource Manual at 1976
Mandatory Restitution (18 U.S.C. § 2259)	Criminal Resource Manual at 1977

9-75.010 RICO Prosecutions

Title 18, United States Code, sections 1461 to 1465 (relating to obscene material), sections 2251, 2251A, 2252, and 2260 (relating to sexual exploitation of children) and sections 2421 to 2424 (relating to prostitution and white slave traffic) are predicate offenses for violation of the RICO statutes, 18 U.S.C. §§ 1961 to 1969. See 18 U.S.C. § 1961(l). Questions concerning RICO authorization and the application of the RICO guidelines should be addressed to the Organized Crime and Racketeering Section; however, questions concerning obscenity issues, the sexual exploitation of children or the transportation of minors for prostitution or other illegal sexual activities that are involved in RICO should be addressed to the Child Exploitation and Obscenity Section (CEOS). CEOS and Organized Crime and Racketeering jointly will authorize RICO prosecutions that involve a predicate offense of obscenity, sexual exploitation of children or the transportation of children for illegal sexual activities. See also USAM 9-110.000 et. seq. for additional information on RICO prosecutions.

9-75.020 General Prosecutive Policies and Priorities

Prosecution of all crimes involving the sexual abuse or sexual exploitation of children and the distribution of child pornography is strongly encouraged. Investigation has shown that many individuals who produce, import or consensually exchange child pornography do so repeatedly and with full knowledge that it is illegal to do so. In addition, many of these individuals engage in child sexual abuse or would like to do so, given the right opportunity. Many of these people also intentionally engage in occupations or activities that bring them into frequent contact with children. Finally, many people use child pornography to encourage their child victims to engage in sexual activity. In evaluating such cases, consideration should be given to, inter alia, characteristics of the material, such as the age of the involved child, the type of conduct depicted, the number of involved children, the quantity of the involved material, whether violence or force is used against the child, and characteristics of the target, such as whether the target currently is engaging in sexual activity with children, whether the target is the parent or guardian, or is in a position of trust with the depicted children, whether the target has shown the material to children, whether the target is making money from the conduct, whether the target has committed any prior offenses involving child sexual abuse or exploitation, and the safety of the community.

Prosecution of large scale distributors of obscene material who realize substantial income from their multi-state operations also is encouraged. Prosecutive priority should be given to cases in which there is evidence of involvement by known organized crime figures. However, prosecution of cases involving relatively small distributors can have a deterrent effect and would dispel any notion that obscenity distributors are insulated from prosecution if their operations fail to exceed a predetermined size or if they fragment their business into small-scale operations. Therefore, prosecution of such distributors also may be appropriate on a case-by-case basis. In evaluating obscenity cases, substantial deference should be given to the United States Attorney's determination of the viability of the case based upon the factors set forth in Miller v. California, 413 U.S. 15 (1973). Under the legal

test of obscenity set forth in that case, material is obscene if, taken as a whole, the average person in the community would find that the material appeals to the prurient interest of its intended audience, depicts sexual conduct in a patently offensive way, and a reasonable person would find the material, taken as a whole, lacks serious literary, artistic, political or scientific value.

9-75.030 Coordination of Cases and Investigations

CEOS and USAOs will work together to ensure that crimes involving child pornography, child sexual abuse, child sexual exploitation and obscenity are vigorously enforced throughout the nation. Generally, such crimes are prosecuted by the USAO in the relevant district. However, CEOS attorneys have substantial experience in prosecuting these types of crimes and they are available to assist in the investigative stage and/or to handle trials as chair or co-chair.

Prior to initiating any activity related to an investigation or prosecution in a district, CEOS shall obtain approval from the United States Attorney for that district. USAOs shall inform CEOS of all significant investigations and cases being prosecuted in the district as well as all significant judicial decisions issued in such cases.

9-75.040 Use of a Computer to Commit Child Pornography Crimes

Title 18, United States Code, Section 2252 prohibits, among other things, the interstate distribution of visual depictions of a child engaged in sexually explicit conduct. This statute is applicable regardless of the method of distribution (via mail, shipping, computer, etc.) but it requires that a real child be involved in the production of the sexually explicit depiction. Improved computer technology, such as "morphing," has created a potential defense to section 2252 crimes. Morphing is the term given to the ability to use a computer to change or create an image from another image. An example of morphing is taking a computer image depicting adult pornography and using a computer and specific types of software to change the faces and bodies of the participants so that they appear to depict children.

To address this and other problems, Congress passed the Child Pornography Prevention Act of 1996, which became effective September 30, 1996. This Act created a new crime, 18 U.S.C. § 2252A, that incorporates an expanded definition of prohibited material by using the term "child pornography." The Act also created "child pornography" definitions, 18 U.S.C. § 2256(8) and (9), that eliminate the requirement that a real child be involved in the production of the visual depiction. The constitutionality of the new statute, including the "child pornography" definitions, is being challenged in jurisdictions throughout the nation. See the Criminal Resource Manual at 1969 for further information.

9-75.050 Telecommunications

Title 47 U.S.C. § 223 makes it a Federal offense for any person in interstate or foreign communication by means of a telecommunication device to knowingly make, create or solicit and initiate transmission of any communication which is obscene, lewd, or indecent. This section was amended by the Communications Decency Act of 1996 (CDA). The indecency part of the Act was challenged, and on June 26, 1997, the United States Supreme Court held that the CDA's "indecent transmission" and "patently offensively display" provisions under Sections 223(a)(1)(B) and (a)(2) and 223(d) abridge the freedom of speech protected by the First Amendment. *Reno v. ACLU*, 117 S.Ct. 2329 (1997). On July 30, 1997, the United States District Court in Philadelphia signed a final order permanently enjoining the Attorney General, the Department of Justice, and all acting under the Attorney General's discretion and control, from enforcing, prosecuting, investigating, or reviewing any matter premised upon "indecent communications." The Department, however, is not enjoined from enforcing, prosecuting, investigating, or reviewing allegations of violations of the Section based on prohibited obscenity or child pornography. See the Criminal Resource Manual at 2465.

For additional information related to the section 223 amendments, see the below-listed sections of the Criminal Resource Manual

Telecommunications Offenses Described	Criminal Resource Manual at 1978
Special Considerations in Obscene or Harassing Telephone Calls	Criminal Resource Manual at 1979
Obscene or Harassing Telephone Calls -- Jury Trial	Criminal Resource Manual at 1980

9-75.100 Multiple District Investigations and Prosecutions

Multiple district investigations are investigations in which either (1) the target conducts his, her or its business, or commits the charged crimes, in more than one district or (2) there are multiple targets who may be located in different districts.

An example of the first type of investigation is an individual or company that sells or distributes child pornography or obscene material nationwide and, therefore, is subject to prosecution in every district where a customer is located. In this type of multi-district investigation, USAOs shall notify CEOS prior to instituting charges against, or entering into a plea agreement with, the target. The purpose of this notification requirement is to permit CEOS to coordinate prosecutions of the target that may be pending in other districts and/or to prevent the Government's actions in one district from negatively impacting those in another district. Generally, multiple prosecutions are not favored. See USAM 9-2.031 for policies relating to multiple prosecutions. In deciding in which district(s) to initiate charges, the following factors should be considered: (1) where the most serious offense was committed, (2) where the most harm was caused, (3) residence of witnesses, (4) residences of victims, (5) location of evidence, and (6) applicable law.

An example of the second type of investigation is an investigation involving computer crimes being committed over the Internet, where the targets (those distributing and receiving the child

pornography or obscene material) may be located in many different districts. In this type of multi-district prosecution, the USAO shall notify CEOS, and the Child Exploitation and Obscenity Coordinator in the other districts, prior to instituting charges against a target. The USAO also shall notify CEOS and the Child Exploitation and Obscenity Coordinator in the other districts of such investigations as early as possible in the investigative stage to permit early resolution of venue issues, if any.

9-75.110 Nationwide Investigations

"Nationwide Investigations" are investigations that will likely have an impact in all or most of the districts. An attorney should always be involved in their development, however, the supervising attorney can be either a USAO or CEOS attorney. CEOS shall be consulted during the development of a nationwide investigation that will be supervised by a USAO attorney. The supervising attorney, whether from CEOS or USAO, shall notify all United States Attorneys of the nationwide investigation prior to its implementation. This will permit the United States Attorney to provide any input regarding potential problems with the initiative that may hinder later prosecutions in his or her district.

The supervising attorney conducting a nationwide investigation shall notify the Child Exploitation and Obscenity Coordinator in each district where a potential defendant is located as soon as that information is developed. The supervising attorney also shall keep CEOS and the involved Coordinators apprised as to the progress of the investigation.

9-75.200 Sexual Abuse -- 18 U.S.C. §§ 2241 et seq.

The primary federal statutes concerning sexual abuse are in Chapter 109A, 18 U.S.C. §§ 2241 to 2245.

For more information on the sexual abuse statutes, see the following sections of the Criminal Resource Manual

Sexual Abuse	Criminal Resource Manual at 1981
Aggravated Sexual Abuse	Criminal Resource Manual at 1982
Sexual Abuse	Criminal Resource Manual at 1983
Sexual Abuse of a Minor or a Ward	Criminal Resource Manual at 1984
Abusive Sexual Contact	Criminal Resource Manual at 1985
Sexual Abuse Resulting in Death	Criminal Resource Manual at 1986
Definitions for 18 U.S.C. §§ 2241-2245	Criminal Resource Manual at 1987
Repeat Offenders	Criminal Resource Manual at 1988
Mandatory Restitution for Sexual Abuse Offenders (18 U.S.C. § 2248)	Criminal Resource Manual at 1989

9-75.300 Transportation for Illegal Sexual Activity and Related Crimes -- 18 U.S.C. §§ 2421 et seq.

Section 2421 of Title 18 prohibits anyone from knowingly transporting an individual in interstate or foreign commerce with the intent that the individual engage in prostitution or any criminal sexual activity and imposes a maximum punishment of five years' imprisonment and/or a fine under Title 18. For information on § 2422 (Coercion and Enticement), see the Criminal Resource Manual at 2001. For information on § 2423 (Transportation of Minors), see the Criminal Resource Manual at 2002. *See also* USAM 9-79.100.

9-75.400 Obscenity/Sexual Exploitation -- Venue

Cases under the obscenity and child pornography statutes in which the proscribed item is mailed may be prosecuted in the district where the material is mailed or deposited with a facility of interstate commerce, the district of receipt, or any intermediate district through which the material passes. See 18 U.S.C. § 3237. In cases where there are complaints by postal patrons about the unsolicited receipt of child pornography or obscene material, the district of receipt would appear to be the appropriate choice of venue. On the other hand, in cases involving numerous mailings by a distributor into various districts, the district of origin may be the appropriate venue for the case. Furthermore, if a case is to be based solely upon test purchases by postal inspectors, it may be venued in the district of receipt where the government has some information showing that there were prior mailings into the recipient districts by the individual involved. Prosecutions should not be brought in jurisdictions through which obscene material passes in transit except in unusual circumstances.

Cases under the child pornography and obscenity statutes in which the crime was committed via computer may be prosecuted in the district where the defendant committed any of the acts proscribed in the statutes. In general, in cases in which the crime was committed via the computer, all of the charges (distribution, receipt, possession, etc.) should be brought in the district in which the target and his computer are located. Multiple prosecutions generally are discouraged.

9-75.410 Pre-trial Diversion

Pre-trial diversion for crimes involving child pornography, child sexual abuse, the sexual exploitation of children and obscenity is generally not favored, however, it may be an appropriate and just disposition in certain cases.

9-75.420 Obscenity/Sexual Exploitation -- Federal-State Relations

Federal prosecution of obscenity and child pornography cases should focus upon producers and interstate distributors. However, cases involving straight possession may warrant federal prosecution and production and distribution cases may be more appropriately prosecuted in state court. Moreover, many cases include both federal charges (such as distribution of pornography) and local charges (such as sexual abuse). Hence, cooperation between federal and local officers and prosecutors is strongly encouraged and can be highly productive in both federal and local efforts. See, Fed.R.Cr.P. 6(e). The formation of multi-agency and multi-jurisdictional task forces is strongly encouraged.

9-75.500 Obscenity/Sexual Exploitation -- Forfeiture, Restitution, and Civil Remedies

Statutes within the child sexual exploitation and obscenity chapters authorize the criminal forfeiture of any property (1) depicting child pornography or obscene material, (2) constituting or derived from proceeds obtained from a child pornography obscenity crime or (3) used, or intended to be used, to commit such an offense. 18 U.S.C. §§ 1465, 2253.

Section 2254 permits seizure and civil forfeiture, according to the pertinent customs laws pertaining to civil forfeiture (see 19 U.S.C. §§ 1600 *et seq.*), of: (1) equipment used, or intended to be used, in producing, reproducing, transporting, shipping or receiving child pornography or any property used to facilitate such a violation; (2) any child pornography or material containing child pornography; and (3) any property constituting, or derived from, profits or proceeds obtained from a violation of the child pornography laws.

Section 2248 mandates that restitution to sexual abuse victims be imposed upon conviction of violations of sections 2241-2244. Section 2259 mandates the same restitution be made to child pornography or child exploitation victims upon conviction of violations of 18 U.S.C. §§ 2251, 2251A, 2252, 2252A and 2260. Both restitution orders may be enforced by either the government or a victim.

Section 2255 of Title 18 permits a minor victim of a section 2251 or section 2252 violation to sue for actual damages in any appropriate United States District Court. Sustained damages are deemed to be no less than \$50,000.

9-75.510 Obscenity/Sexual Exploitation -- Request to Re-export

For a discussion of on request to re-export, see Criminal Resource Manual (Number to be determined).

9-75.600 Sexual Assault/Child Molestation -- Federal Rules of Evidence

For a discussion of Federal Rules of Evidence 413-415 (effective July 10, 1995), see the Criminal Resource Manual at 2003.

9-75.610 Child Victims' and Child Witnesses' Rights

The Victims of Child Abuse Act of 1990 (VCAA) (18 U.S.C. § 3509) was enacted in response to the alarming increase of suspected child abuse cases made each year. In such cases, because the investigation and prosecution of child abuse is extremely complex, too often the system has not paid sufficient attention to the needs and welfare of the child victim, thus aggravating the trauma that the child victim had already experienced. Therefore, in order to address this, the VCAA provided, inter alia, authorization for training and technical assistance to judges, attorneys and others involved in State and Federal court child abuse cases; requires certain professionals to report suspected cases of child abuse under Federal jurisdiction; and amends the United States criminal code to ensure protection of children's rights in court and throughout the criminal justice system. The goal of every Federal law enforcement officer, investigator and prosecutor must be to make their best efforts or take whatever valid action necessary to reduce the trauma to the child victim caused by the criminal justice system while at the same time increasing the successful prosecution of child abuse offenders.

For additional information regarding victims, see USAM 3-7.300 et seq.

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